The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHELL S. SIMPSON

Appeal 2007-1602
Application 09/940,596
Technology Center 2100

Decided: October 1, 2007

Before LANCE LEONARD BARRY, MAHSHID D. SAADAT, and JEAN R. HOMERE, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Examiner's Final Rejection of claims 1 through 14. We have jurisdiction under 35 U.S.C. § 6(b) to decide this appeal. We affirm.

The Invention

Appellant invented a method and system for launching a browser or other service upon the occurrence of a predetermined event. Particularly, upon determining that a device has reached a predetermined status, a command is sent to a client resident service to launch the browser or service to a particular network location indicating the status of the device. (Specification 4).

An understanding of the invention can be derived from exemplary independent claim 1, which reads as follows:

1. A method for launching a browser or other service, comprising the steps of:

determining if a predetermined event related to activity of a web or network service has occurred; and

sending a command to a system to launch the browser or service to a particular network location if the predetermined event is to have occurred.

In rejecting the claims on appeal, the Examiner relies upon the following prior art:

Tuchitoi	US 6,906,813 B1	Jun. 14, 2005

The Examiner rejects the claims on appeal as follows:

A. Claims 1 through 14 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Tuchitoi.

Regarding the above rejection, Appellant contends[1] that Tuchitoi does not fairly teach or suggest sending a command to a system to launch the browser or service to a particular network location if a predetermined event is determined to have occurred, as recited in claim 1. (Br. 4, Reply Br. 4.) In response, the Examiner contends that Tuchitoi's disclosure of launching a pop-up message to indicate that a print job has reached a predetermined status teaches Appellant's claimed launching of a browser or service to a network location upon the occurrence of a predetermined event. (Answer 3, 7 and 8.)

ISSUE

The *pivotal* issue in the appeal before us is as follows:

Has Appellant shown[2] that the Examiner failed to establish that the disclosure of Tuchitoi anticipates the claimed invention under 35 U.S.C.

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[1] This decision considers only those arguments that Appellant submitted in the Appeal and Reply Briefs. Arguments that Appellant could have made but chose not to make in the Briefs are deemed to have been waived. *See* 37 C.F.R. § 41.37(c)(1) (vii)(eff. Sept. 13, 2004). *See also In re Watts*, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

Appellant did not provide separate arguments with respect to the rejections of claims 2 through 14 and as being anticipated by Tuchitoi. Therefore, we select independent claim 1 as being representative of these claims. Claims 2 through 14 consequently fall together with representative claim 1. *See In re Young,* 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991). *See also* 37 C.F.R. § 41.37(c)(1)(vii).

[2] In the examination of a patent application, the Examiner bears the initial burden of showing a prima facie case of unpatentability. *In re Piasecki,* 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). When that burden is met, the burden then shifts to the applicant to rebut. *Id.*; *see also In re Harris*, 409 F.3d 1339, 1343-44, 74 USPQ2d 1951, 1954-55 (Fed. Cir. 2005) (finding rebuttal evidence unpersuasive). If the applicant produces rebuttal evidence of adequate weight, the prima facie case of

§ 102(e)? Particularly, does Tuchitoi's disclosure of launching a pop-up message to indicate that a print job has reached a predetermined status teach Appellant's claimed launching of a browser or service to a network location upon the occurrence of a predetermined event?

FINDINGS OF FACT

The following findings of fact are supported by a preponderance of the evidence.

The Invention

1. Appellant's Specification, at page 61, paragraph 0175, describes the invention as follows:

> Referring now to FIG. 12, there is disclosed an invention for launching a browser and directing it to browse to a web site or service if a predetermined event is determined to have occurred. This method could be used for monitoring the progress of the performance of a job at a web service or network service. In a preferred embodiment, the event could be the completion of a job, such as a print job or a fax job. Alternatively or in addition, the event could be the occurrence of an error, such as for example, an error that has stopped the forward progress of the job. In the context of a print job or a fax job, that error might be a paper jam, or a signal that the printer or fax is out of paper. (*See also* Br. 5, Reply Br. 4.)

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unpatentability is dissipated. *Piasecki*, 745 F.2d at 1472, 223 USPQ at 788. Thereafter, patentability is determined in view of the entire record. *Id.* However, on appeal to the Board it is an Appellant's burden to establish that the Examiner did not sustain the necessary burden and to show that the Examiner erred -- on appeal. We will not start with a presumption that the Examiner erred.

The Prior Art Relied Upon

2. Tuchitoi teaches a method and system for notifying a host computer of the status of a print job upon the occurrence of a predetermined event related to the print job. (Abstract.)

3. As depicted in Figure 1, Tuchitoi teaches a printing apparatus (150) that communicates with a host computer (100) via a printing medium (180). (Col. 1, ll. 43-45). Tuchitoi also indicates that the host can be connected to the printing apparatus via a network (Col. 23, ll.16-18).

4. The host computer (100) includes inter alia a utility module (105) that inquires from the host computer (100) about the status of submitted print jobs. (Col. 1, ll. 51-67).

5. Tuchitoi also teaches as part of the printing apparatus, an information manager (160) that receives status requests for print jobs from the utility module (105), and provides the requested information to the host (100) via the logic channel controller (151). (Col. 2, ll. 41-48).

6. Tuchitoi teaches that when a print job has been completed, the information manager checks the job attributes in the print job database (305) to determine whether a print job notification address had been set up for a particular print job. If such notification address was previously established for the print job, upon completing said print job, the information manager sends a notification to the address via the utility module, which displays a pop up dialog on the host computer to inform the user of said host computer that such print job has been completed. (Col. 13, ll. 5-28).

PRINCIPLES OF LAW

ANTICIPATION

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

In rejecting claims under 35 U.S.C. § 102, a single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation. *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375-76, 77 USPQ2d 1321, 1325-26 (Fed. Cir. 2005), citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565, 24 USPQ2d 1321, 1326 (Fed. Cir. 1992). Anticipation of a patent claim requires a finding that the claim at issue "reads on" a prior art reference. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346, 51 USPQ2d 1943, 1945 (Fed. Cir. 1999) ("In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.") (internal citations omitted).

ANALYSIS

35 U.S.C. § 102(b) REJECTION

As set forth above, representative claim 1 requires sending a command to a system to launch the browser or service to a particular

network location if a predetermined event is determined to have occurred. We find that Tuchitoi reasonably teaches that limitation. As detailed in the Findings of Fact section above, we have found that Tuchitoi teaches that, upon the completion of a print job on a printing apparatus, an information manager sends a notification of the completed print job to a utility module to generate a pop up message to a user on a host computer on a network. (Finding of Fact 6). One of ordinary skill in the art would readily recognize that Tuchitoi's disclosure of sending the notification to the utility module to generate the pop up menu teaches Appellant's sending of a command to a browser or service. Particularly, the ordinarily skilled artisan would readily appreciate that the pop up menu is only generated as a result of the instructions that the information manager dispatched to the utility module to forward a certain status of the print job to a particular address on the network. Further, the ordinarily skilled artisan would also recognize that, similarly to the claimed invention, Tuchitoi's notification is sent to a host from the printing apparatus to be displayed on the host, upon the occurrence of the completion of a print job (a predetermined event). In light of these findings, we conclude that Tuchitoi teaches the limitation of sending a command to a system to launch the browser or service to a particular network location if a predetermined event is determined to have occurred. It follows that the Examiner did not err in rejecting claims 1 through 14 as being anticipated by Tuchitoi. We affirm this rejection.

CONCLUSION OF LAW

On the record before us, Appellant has not shown that the Examiner has failed to establish that Tuchitoi anticipates claims 1 through 14 under 35 U.S.C. § 102(e).

DECISION

We have affirmed the Examiner's decision rejecting claims 1 through 14.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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